

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

JARROD A. LILLY,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD74348

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 28, 2012

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Jodie C. Asel, Judge

JUDGES

Division Three: Howard, P.J., and Mitchell and Martin, JJ.

CONCURRING.

ATTORNEYS

Alexa Irene Pearson, Assistant Public Defender
Columbia, MO

Attorney for Appellant,

Chris Koster, Attorney General
Todd T. Smith, LL.M., Assistant Attorney General
Jefferson City, MO

Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

JARROD A. LILLY,)
)
) Appellant,)
v.) OPINION FILED:
) August 28, 2012
STATE OF MISSOURI,)
)
) Respondent.)

WD74348

Boone County

Before Division Three Judges: Victor C. Howard, Presiding Judge, and Karen King Mitchell and Cynthia L. Martin, Judges

Jarrold Lilly appeals the dismissal (without an evidentiary hearing) of his Rule 24.035 motion for post-conviction relief, which sought to vacate his convictions for sexual assault and first-degree robbery.

AFFIRMED.

Division Three holds:

In affirming the dismissal, this court holds:

- (1) That Lilly's post-conviction motion was both untimely and successive in violation of Rule 24.035, thus requiring dismissal by the trial court;
- (2) That Lilly's argument, raised for the first time on appeal, that the time limits of Rule 24.035 violate his right to due process cannot be reviewed;
- (3) That Lilly did not waive the right to seek post-conviction relief under Rule 24.035(b) simply because the motion at issue in this appeal was untimely, as he has previously filed a timely Rule 24.035 motion;

- (4) That Lilly did not waive his claim of newly discovered evidence under Rule 24.035(d) by failing to raise it in his first post-conviction motion because this claim was not “known” to him at that time; and
- (5) That Lilly’s newly discovered evidence claim was not cognizable insofar as claims of newly discovered evidence must be raised in a habeas proceeding.

Opinion by: Karen King Mitchell, Judge

August 28, 2012

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.